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SENATE BILL 386

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Manny M. Aragon

AN ACT

RELATING TO WATER; IMPOSING WATER PROTECTION FEES FOR THE
DIVERSION OR WITHDRAWAL OF PUBLIC WATERS OF THE STATE; MAKING
AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 8 of this act may be cited as the "Water Protection Fee
Act".

Section 2. [NEW MATERIAL] DEFINITION.--As used in the
Water Protection Fee Act, "person" means any individual or
legal entity.

Section 3. [NEW MATERIAL] WATER PROTECTION FEES--
IMPOSITION.--

A. In order to exercise the right to use the public
waters of the state, the following fees are imposed on the

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1 following persons who divert or withdraw the public waters of
2 the state:

3 (1) irrigation districts, conservancy
4 districts, artesian conservancy districts and irrigation
5 districts cooperating with the United States, one dollar fifty
6 cents (\$1.50) per acre-foot per year paid annually;

7 (2) persons diverting water for agricultural
8 uses for which the fees imposed by this subsection have not
9 otherwise been imposed, one dollar fifty cents (\$1.50) per
10 acre-foot per year paid annually;

11 (3) persons diverting water non-consumptively
12 used for electrical generation or mill or industrial purposes,
13 one dollar (\$1.00) per cubic foot per second of water non-
14 consumptively used based upon the maximum yearly diversion paid
15 annually;

16 (4) persons diverting water for commercial,
17 industrial or mining purposes, eighteen dollars (\$18.00) per
18 acre-foot per year paid annually;

19 (5) persons diverting water for a public water
20 supply or for power production purposes, sixteen dollars
21 (\$16.00) per acre-foot per year paid annually;

22 (6) persons storing water in an open reservoir
23 behind a constructed dam, two dollars (\$2.00) per acre-foot
24 evaporated per year paid annually;

25 (7) persons diverting water for livestock

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1 purposes, one dollar fifty cents (\$1.50) per acre-foot per year
2 paid annually; and

3 (8) persons owning a domestic well permitted
4 pursuant to Section 72-12-1.1 NMSA 1978 and from which water is
5 diverted, a fixed annual fee of nine dollars (\$9.00) per well
6 paid annually.

7 B. With the exception of domestic wells that are
8 assessed a fixed annual fee, the water protection fee shall be
9 based on the actual diversion or withdrawal of water if
10 measured by a metering system approved by the state engineer;
11 otherwise, fees shall be based on the amount of the permitted,
12 declared or adjudicated water right. Fees for evaporation
13 shall be assessed only for reservoirs greater than one acre in
14 surface area. The method of calculating the amount of
15 evaporation shall be computed by the state engineer using
16 standard engineering methods.

17 C. The point of measurement of a diversion shall
18 be:

19 (1) the farm head gate where water is turned
20 into the field for all agricultural surface water diversions;

21 (2) the well head for all ground water
22 diversions; and

23 (3) the point where water is first diverted
24 into the treatment or conveyance system for all municipal,
25 industrial, mining, power production or public water supply

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1 system diversions.

2 Section 4. [NEW MATERIAL] PAYMENT OF WATER PROTECTION
3 FEE--EVIDENCE OF WATER RIGHT.--Payment of fees imposed by the
4 Water Protection Fee Act neither confirms nor is evidence of
5 any right to appropriate the public waters of the state.

6 Section 5. [NEW MATERIAL] DOMESTIC WELL WATER PROTECTION
7 FEE--COLLECTION.--

8 A. The county assessor shall collect the water
9 protection fee imposed by the Water Protection Fee Act on
10 domestic well owners. The annual fee shall be assessed with
11 the property tax bill for the property on which the domestic
12 well is located. The county assessor shall remit the water
13 protection fee collected to the taxation and revenue department
14 within thirty days of receipt.

15 B. The state engineer shall provide the county
16 assessor of each county with the addresses of the owners and
17 locations of domestic wells within the county.

18 Section 6. [NEW MATERIAL] OTHER WATER PROTECTION FEES--
19 COLLECTION--INFORMATION.--

20 A. The taxation and revenue department shall
21 provide by regulation for the manner and form of collection of
22 the water protection fees imposed by the Water Protection Fee
23 Act.

24 B. A person diverting the public waters of the
25 state shall supply the taxation and revenue department with any

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1 information necessary for collection of fees by the department
2 pursuant to department regulations.

3 C. The state engineer, interstate stream
4 commission, department of environment and public regulation
5 commission shall provide the taxation and revenue department
6 with the information and records necessary to assess the fees
7 imposed by the Water Protection Fee Act other than the fee
8 imposed on domestic well owners.

9 Section 7. [NEW MATERIAL] WATER PROTECTION FUND--
10 CREATED.--The "water protection fund" is created in the state
11 treasury and shall be administered by the state engineer in
12 accordance with the provisions of the Water Protection Fee Act.
13 The fund shall consist of fees distributed to the fund pursuant
14 to the Water Protection Fee Act and any other money donated,
15 distributed or appropriated to the fund. Balances in the fund
16 at the end of a fiscal year shall not revert to the general
17 fund. Earnings on balances in the fund shall be credited to
18 the fund.

19 Section 8. [NEW MATERIAL] WATER PROTECTION FUND--
20 DISPOSITION.--Money in the water protection fund is
21 appropriated to the state engineer to:
22 A. complete adjudications;
23 B. conduct hydrologic investigations of the waters
24 of the state;
25 C. actively manage the waters of the state to

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1 protect persons that divert water under the state's prior
2 appropriation system; and

3 D. preserve, protect and develop the waters of the
4 state.

5 Section 9. A new section of the Tax Administration Act is
6 enacted to read:

7 "[NEW MATERIAL] ADMINISTRATIVE FEE IMPOSED.--The
8 department shall withhold an administrative fee of five percent
9 of the receipts collected pursuant to the Water Protection Fee
10 Act."

11 Section 10. A new section of the Tax Administration Act
12 is enacted to read:

13 "[NEW MATERIAL] DISTRIBUTION--WATER PROTECTION FEES.--A
14 distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be
15 made to the water protection fund from the receipts
16 attributable to the water protection fees collected pursuant to
17 the Water Protection Fee Act less any administrative fee
18 withheld by the department."

19 Section 11. Section 7-1-2 NMSA 1978 (being Laws 1965,
20 Chapter 248, Section 2, as amended) is amended to read:

21 "7-1-2. APPLICABILITY.--The Tax Administration Act
22 applies to and governs:

23 A. the administration and enforcement of the
24 following taxes or tax acts as they now exist or may hereafter
25 be amended:

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- 1 (1) Income Tax Act;
- 2 (2) Withholding Tax Act;
- 3 (3) Venture Capital Investment Act;
- 4 (4) Gross Receipts and Compensating Tax Act
- 5 and any state gross receipts tax;
- 6 (5) Liquor Excise Tax Act;
- 7 (6) Local Liquor Excise Tax Act;
- 8 (7) any municipal local option gross receipts
- 9 tax;
- 10 (8) any county local option gross receipts
- 11 tax;
- 12 (9) Special Fuels Supplier Tax Act;
- 13 (10) Gasoline Tax Act;
- 14 (11) petroleum products loading fee, which fee
- 15 shall be considered a tax for the purpose of the Tax
- 16 Administration Act;
- 17 (12) Alternative Fuel Tax Act;
- 18 (13) Cigarette Tax Act;
- 19 (14) Estate Tax Act;
- 20 (15) Railroad Car Company Tax Act;
- 21 (16) Investment Credit Act, Capital Equipment
- 22 Tax Credit Act, rural job tax credit, Laboratory Partnership
- 23 with Small Business Tax Credit Act and Technology Jobs Tax
- 24 Credit Act;
- 25 (17) Corporate Income and Franchise Tax Act;

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- 1 (18) Uniform Division of Income for Tax
- 2 Purposes Act;
- 3 (19) Multistate Tax Compact;
- 4 (20) Tobacco Products Tax Act; and
- 5 (21) the telecommunications relay service
- 6 surcharge imposed by Section 63-9F-11 NMSA 1978, which
- 7 surcharge shall be considered a tax for the purposes of the Tax
- 8 Administration Act;
- 9 B. the administration and enforcement of the
- 10 following taxes, surtaxes, advanced payments or tax acts as
- 11 they now exist or may hereafter be amended:
- 12 (1) Resources Excise Tax Act;
- 13 (2) Severance Tax Act;
- 14 (3) any severance surtax;
- 15 (4) Oil and Gas Severance Tax Act;
- 16 (5) Oil and Gas Conservation Tax Act;
- 17 (6) Oil and Gas Emergency School Tax Act;
- 18 (7) Oil and Gas Ad Valorem Production Tax Act;
- 19 (8) Natural Gas Processors Tax Act;
- 20 (9) Oil and Gas Production Equipment Ad
- 21 Valorem Tax Act;
- 22 (10) Copper Production Ad Valorem Tax Act;
- 23 (11) any advance payment required to be made
- 24 by any act specified in this subsection, which advance payment
- 25 shall be considered a tax for the purposes of the Tax

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1 Administration Act;

2 (12) Enhanced Oil Recovery Act;

3 (13) Natural Gas and Crude Oil Production

4 Incentive Act; and

5 (14) intergovernmental production tax credit

6 and intergovernmental production equipment tax credit;

7 C. the administration and enforcement of the
8 following taxes, surcharges, fees or acts as they now exist or
9 may hereafter be amended:

10 (1) Weight Distance Tax Act;

11 (2) the workers' compensation fee authorized
12 by Section 52-5-19 NMSA 1978, which fee shall be considered a
13 tax for purposes of the Tax Administration Act;

14 (3) Uniform Unclaimed Property Act;

15 (4) 911 emergency surcharge and the network
16 and database surcharge, which surcharges shall be considered
17 taxes for purposes of the Tax Administration Act;

18 (5) the solid waste assessment fee authorized
19 by the Solid Waste Act, which fee shall be considered a tax for
20 purposes of the Tax Administration Act;

21 (6) the water conservation fee imposed by
22 Section 74-1-13 NMSA 1978, which fee shall be considered a tax
23 for the purposes of the Tax Administration Act; ~~and~~

24 (7) the gaming tax imposed pursuant to the
25 Gaming Control Act; and

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